

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN ANDREW JORDAN,

Defendant and Appellant.

C045626

(Super. Ct. No. 02F00735)

Pursuant to a negotiated plea agreement for a five-year sentence, defendant Jonathan Andrew Jordan pled no contest to vehicular manslaughter with gross negligence and admitted suffering a prior prison term. (Pen. Code, §§ 192, subd. (c)(1), 667.5, subd. (b).) In return for his plea, the trial court dismissed additional charges of driving under the influence causing bodily injury (Veh. Code, § 23153, subd. (a)), driving with a blood alcohol level of more than .08 percent causing bodily injury (Veh. Code, § 23153, subd. (b)), and failing to display proper registration, an infraction (Veh.

Code, § 4462, subd. (b)). The trial court also dismissed case No. 02F02450 with a *Harvey* waiver.¹

Defendant was sentenced to five years in prison with credit for 599 actual days served and 89 days conduct credit under Penal Code section 2933.1, subdivision (c),² although defense counsel stated defendant was entitled to "50 percent" presentence credit. The prosecutor stated the victim's family sought \$2,600 in victim restitution, which trial counsel said would be disputed. The trial court imposed a restitution fine of \$1,000 and a suspended parole violation restitution fine of \$1,000. (Pen. Code, §§ 1202.4, subd. (b), 1202.45.)

Defendant filed a notice of appeal from sentencing. Defendant also filed an application for a certificate of probable cause that was denied.³

During the pendency of the appeal, appellate counsel wrote to the trial court seeking a correction of the sentence to calculate conduct credit under Penal Code section 4019, rather than Penal Code section 2933.1, subdivision (c), and requesting a corrected abstract of judgment be filed with this court. (Pen. Code, § 1237.1.) On December 16, 2003, the trial court

¹ *People v. Harvey* (1979) 25 Cal.3d 754.

² Penal Code section 2933.1, subdivision (c), limits presentence conduct credit to 15 percent of time served for those convicted of certain violent crimes listed in Penal Code section 667.5, subdivision (c).

³ Defendant contended the trial court improperly utilized Penal Code section 2933.1, subdivision (c), to award him 15 percent conduct credits.

issued a minute order correcting the credits to 599 actual days plus 298 days "G/W" (good time/work time). On December 30, the trial court issued another minute order reducing the restitution amount to the victim's mother to \$1,810.

Appellate counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

We shall order the trial court to issue a corrected abstract of judgment reflecting the two post-sentence orders. Although a minute order may memorialize a prison sentence (Pen. Code, § 1213), because there have been two substantive changes in the judgment since it was pronounced, issuing a corrected abstract is the better practice to insure that the Department of Corrections is able to implement the judgment.

Having undertaken an examination of the entire record, we find no other error that would result in a disposition more favorable to defendant.

DISPOSITION

The trial court is ordered to prepare a corrected abstract of judgment to include:

1. Presentence credit of 599 actual days under Penal Code section 2900.5;

2. Conduct credit of 298 days under Penal Code section 4019;

3. Victim restitution payable to the family of April Paddock in the amount of \$1,810 under Penal Code section 1202.4, subdivision (f).

The trial court shall forward a certified copy of the corrected abstract of judgment to the Department of Corrections.

As corrected, the judgment is affirmed.

SIMS, Acting P.J.

We concur:

NICHOLSON, J.

HULL, J.